

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

UNITED SHEET METAL, INC.

137 Log Canoe Circle
Stevensville, MD 21666

Plaintiff

v.

Case No. _____

**BERKLEY REGIONAL
INSURANCE COMPANY**

11201 Douglas Avenue
Urbandale, Iowa 50322

Serve:

Insurance Commissioner
200 St. Paul Place, Suite 2700
Baltimore, Maryland 21202

**Resident Agent for Berkley Regional
Insurance Company**

Defendant.

* * * * *

COMPLAINT

Plaintiff, United Sheet Metal, Inc. ("USM"), by undersigned counsel, files this Complaint against Defendant, Berkley Regional Insurance Company ("Berkley") and, as grounds therefore, states as follows:

The Parties, Jurisdiction and Venue

1. USM is a Maryland corporation with its principal place of business at 137 Log Canoe Circle, Stevensville, MD 21666, formerly located at 51 Ritchie Road, Capitol Heights, Maryland 20743. USM is an HVAC ductwork subcontractor in the construction industry.

2. Defendant, Berkley, is a Delaware insurance company with a principal place of business located at 11201 Douglas Avenue, Urbandale, Iowa 50322. Liberty is a surety on labor

and material payment bonds for the projects that are the subject of this action. This Court has jurisdiction over Berkley.

3. This Court has subject-matter jurisdiction over all causes of action asserted in this Complaint pursuant to 28 U.S.C. § 1332. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and as between Plaintiff and Defendant diversity of citizenship exists.

4. All conditions precedent for the commencement and maintenance of this action have been performed, occurred or satisfied, or have been excused, waived, or abandoned by Defendant.

Count I
Hyattsville Payment Bond Claim

5. The construction project that is the subject of this count is known as IFB 038-12 Hyattsville Area Elementary School Construction (the “Hyattsville Project”), located in Prince George’s County.

6. The Board of Education of Prince George’s County is the owner (the “Hyattsville Owner”) of the Hyattsville Project.

7. SIGAL Construction Corporation (“SIGAL”) was the general contractor for the Hyattsville Project.

8. Upon information and belief, SIGAL entered into a subcontract (the “Hyattsville Subcontract”) with ServiceMax, Inc. (“ServiceMax”) pursuant to which ServiceMax was to provide mechanical and plumbing work as required by SIGAL’s contract with the Owner on the Hyattsville Project.

9. Upon information and belief, ServiceMax and PowerMax, Inc. (“PowerMax”) are affiliated companies.

10. Upon information and belief, PowerMax, on behalf of and as agent of ServiceMax, entered into a sub-subcontract ("Hyattsville Sub-subcontract") with USM pursuant to which USM was to provide HVAC ductwork as required by ServiceMax's subcontract with Sigal on the Hyattsville Project.

11. Berkley issued a labor and material payment bond (the "Hyattsville Payment Bond") to assure payment to subcontractors and suppliers, such as USM, who provided labor, materials or equipment to the Project. A copy of the Hyattsville Payment Bond is attached as **EXHIBIT 1**.

12. USM has provided the work, materials and equipment required by the Hyattsville Sub-subcontract as well as change work directed by PowerMax for the Hyattsville Project.

13. Despite this fact, to date USM remains unpaid for labor, materials and equipment provided to the Hyattsville Project in an amount totaling \$367,186.00.

14. On June 4, 2014, USM sent its claim on the Hyattsville Payment Bond to Berkley and PowerMax. A copy of the Hyattsville Payment Bond claim letter is attached as **EXHIBIT 2**.

15. USM sent additional bond claim information on August 19, 2014. A copy of the second Hyattsville Payment Bond claim letter is attached as **EXHIBIT 3**.

16. To date, despite demand, neither Berkley nor ServiceMax or PowerMax have paid USM the outstanding amount due and owing.

17. USM therefore remains unpaid for work performed and labor, materials and services provided to the Hyattsville Project in the amount of \$367,186.00.

18. USM has timely filed this action pursuant to the Hyattsville Payment Bond.

19. Pursuant to the Hyattsville Payment Bond issued by Berkley and under the law, Berkley is liable to USM for unpaid labor, materials, and equipment provided to the Hyattsville

Project in the amount of \$367,186.00.

WHEREFORE, Plaintiff, United Sheet Metal, Inc. demands that judgment be entered against Defendant Berkely Regional Insurance Company on Count I for damages totaling \$367,186.00, together with interest, attorneys' fees and costs of these proceedings.

Count II
Willow Oaks Payment Bond Claim

20. The construction project that is the subject of this count is known as Willow Oaks Office Building (the "Willow Oaks Project"), located in Fairfax County, Virginia.

21. 8221 Willow Oaks Corporate Supervisors, Fairfax County is the owner (the "Owner") of the Willow Oaks Project.

22. Manhattan Construction Corporation ("Manhattan") was the general contractor for the Willow Oaks Project.

23. Manhattan entered into a subcontract (the "Willow Oaks Subcontract") with PowerMax, Inc. ("PowerMax") pursuant to which PowerMax was to provide mechanical and plumbing work as required by Manhattan's contract with the Willow Oaks Owner on the Willow Oaks Project.

24. PowerMax entered into a sub-subcontract ("Willow Oaks Sub-subcontract") with USM pursuant to which USM was to provide HVAC ductwork as required by PowerMax's subcontract with Manhattan on the Willow Oaks Project.

25. Berkely issued a labor and material payment bond (the "Willow Oaks Payment Bond") to assure payment to subcontractors and suppliers, such as USM, who provided labor, materials or equipment to the Willow Oaks Project. A copy of the Willow Oaks Payment Bond is attached as **EXHIBIT 4**.

26. USM has provided work, materials and equipment required by the Willow Oaks

Sub-subcontract as well as change work directed by PowerMax for the Willow Oaks Project.

27. Despite this fact, to date USM remains unpaid for labor, materials and equipment provided to the Willow Oaks Project in an amount totaling \$331,238.60.

28. On June 4, 2014, USM sent its claim on the Willow Oaks bond to Berkley and PowerMax. A copy of the Willow Oaks bond claim letter is attached as **EXHIBIT 5**.

29. USM sent additional bond claim information on August 19, 2014. A copy of the second Willow Oaks bond claim letter is attached as **EXHIBIT 6**.

30. To date, despite demand, neither Berkley nor PowerMax have paid USM the outstanding amount due and owing.

31. USM therefore remains unpaid for work performed and labor, materials and services provided to the Willow Oaks Project in the amount of \$331,238.60.

32. USM has timely filed this action pursuant to the Willow Oaks Payment Bond.

33. Pursuant to the Willow Oaks Payment Bond issued by Berkley and under the law, Berkley is liable to USM for unpaid labor, materials, and equipment provided to the Willow Oaks Project in the amount of \$331,238.60.

WHEREFORE, Plaintiff, United Sheet Metal, Inc. demands that judgment be entered against Defendant Berkely Regional Insurance Company on Count II for damages totaling \$331,238.60, together with interest, attorneys' fees and costs of these proceedings.

Count III
Command Suite Payment Bond Claim

34. The construction project that is the subject of this count is known as Command Suite Renovation Bldg. 1, 5th Deck, Walter Reed National Military Medical Center, Bethesda, MD (the "Command Suite Project"), located in Montgomery County, Maryland.

35. CER, Inc. ("CER") was the general contractor for the Command Suite Project.

36. CER entered into a subcontract (the "Command Suite Subcontract") with PowerMax, Inc. ("PowerMax") pursuant to which PowerMax was to provide mechanical and plumbing work as required by CER's contract with the Owner on the Command Suite Project.

37. PowerMax entered into a sub-subcontract ("Command Suite Sub-subcontract") with USM pursuant to which USM was to provide HVAC ductwork as required by PowerMax's subcontract with CER on the Command Suite Project.

38. Berkley issued a labor and material payment bond (the "Command Suite Payment Bond") to assure payment to subcontractors and suppliers, such as USM, who provided labor, materials or equipment to the Command Suite Project. According to Berkley, the bond number of the Command Suite Payment Bond is 0160109.

39. USM has provided the work, materials and equipment required by the Command Suite Sub-subcontract as well as change work directed by PowerMax for the Command Suites Project.

40. Despite this fact, to date USM remains unpaid for labor, materials and equipment provided to the Command Suite Project in an amount totaling \$20,468.00.

41. On June 4, 2014, USM sent its claim on the Command Suite bond to Berkley and PowerMax. A copy of the Command Suite bond claim letter is attached as **EXHIBIT 7**.

42. USM sent additional bond claim information on August 19, 2014. A copy of the second Command Suite bond claim letter is attached as **EXHIBIT 8**.

43. To date, despite demand, neither Berkley nor PowerMax have paid USM the outstanding amount due and owing.

44. USM therefore remains unpaid for work performed and labor, materials and services provided to the Command Suite Project in the amount of \$20,468.00.

45. USM has timely filed this action pursuant to the Command Suite Payment Bond.

46. Pursuant to the Command Suite Payment Bond issued by Berkley and under the law, Berkley is liable to USM for unpaid labor, materials, and equipment provided to the Command Suite Project in the amount of \$20,468.00.

WHEREFORE, Plaintiff, United Sheet Metal, Inc. demands that judgment be entered against Defendant Berkely Regional Insurance Company on Count III for damages totaling \$20,468.00, together with interest, attorneys' fees and costs of these proceedings.

Count IV
P-140 Payment Bond Claim

47. The construction project that is the subject of this count is known as P-140 Special Communications Engineering Facility, Webster Field, St. Ignis, MD (the "P-140 Project"), located in St. Mary's County, Maryland.

48. G-W Management Services, LLC ("G-W Management") was the general contractor for the P-140 Project.

49. G-W Management entered into a subcontract (the "P-140 Subcontract") with PowerMax, Inc. ("PowerMax") pursuant to which PowerMax was to provide mechanical and plumbing work as required by G-W Management's contract with the owner on the P-140 Project.

50. PowerMax entered into a sub-subcontract ("P-140 Sub-subcontract") with USM pursuant to which USM was to provide HVAC ductwork as required by PowerMax's subcontract with G-W Management on the P-140 Project.

51. Berkley issued a labor and material payment bond (the "P-140 Payment Bond") to assure payment to subcontractors and suppliers, such as USM, who provided labor, materials or equipment to the P-140 Project. A copy of the P-140 Payment Bond is attached as **EXHIBIT 9**.

52. USM has provided the work, materials and equipment required by the P-140 Sub-subcontract as well as change work directed by PowerMax for the P-140 Project.

53. Despite this fact, to date USM remains unpaid for labor, materials and equipment provided to the P-140 Project in an amount totaling \$38,492.00.

54. On June 4, 2014, USM sent its claim on the P-140 bond to Berkley and PowerMax. A copy of the P-140 bond claim letter is attached as **EXHIBIT 10**.

55. USM sent additional bond claim information on August 19, 2014. A copy of the second P-140 bond claim letter is attached as **EXHIBIT 11**.

56. To date, despite demand, neither Berkley nor PowerMax have paid USM the outstanding amount due and owing.

57. USM therefore remains unpaid for work performed and labor, materials and services provided to the P-140 Project in the amount of \$38,492.00.

58. USM has timely filed this action pursuant to the P-140 Payment Bond.

59. Pursuant to the P-140 Payment Bond issued by Berkley and under the law, Berkley is liable to USM for unpaid labor, materials, and equipment provided to the P-140 Project in the amount of \$38,492.00.

WHEREFORE, Plaintiff, United Sheet Metal, Inc. demands that judgment be entered against Defendant Berkely Regional Insurance Company on Count IV for damages totaling \$38,492.00, together with interest, attorneys' fees and costs of these proceedings.

DATED August 20, 2014

Respectfully Submitted,

BY: /s/ Nicole L. Campbell
Roger C. Jones, Bar No. 29328
Nicole L. Campbell, Bar No. 14336
Huddles Jones Sorteberg & Dachille, P.C.
10211 Wincopin Circle, Suite 200
Columbia, Maryland 21044
(410) 720-0072 (Telephone)
(410) 720-0329 (Facsimile)
jones@constructionlaw.com
campbell@constructionlaw.com

Counsel for Plaintiff, United Sheet Metal, Inc.